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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/027,741	12/20/2001	Trenton M. Overholt	RPC 0579 PUS	3788
33171	7590	10/24/2003		
KONSTANTINE J. DIAMOND 4010 E. 26TH STREET LOS ANGELES, CA 90023				
			EXAMINER CASTELLANO, STEPHEN J	
			ART UNIT	PAPER NUMBER

3727

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.	Applicant(s)	
	10/027,741	OVERHOLT ET AL.	
	Examiner	Art Unit	
	Stephen J. Castellano	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 and 27-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5 and 6 is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-17 and 20-33 is/are rejected.
- 7) ☒ Claim(s) 9, 12, 18, 19 and 22 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____. |

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The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second portion of the peripheral edge of the bottom panel proximate the first portion includes a raised flange that overlies the outer face of the one side panel when the one side panel is pivoted to the raised position as stated in claims 9, 12 and 22 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Applicant has asked for further explanation, the flange 74 lies adjacent to and in front of the outer face of the side panel rather than above or over. Therefore, the raised flange doesn't overlie the side panel when the one panel is in the raised position.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 9, 12 and 22 are objected to because of the following informalities: Claims 9, 12 and 22 recites structure pertaining to the second portion of the peripheral edge of the bottom panel proximate the first portion includes a raised flange that overlies the outer face of the one side panel when the one side panel is pivoted to the raised position which has not been shown in the drawings. Appropriate correction is required. Appropriate correction may include the cancellation of the claim(s) or the removal of the objectionable portion of the claim(s). Do not submit new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 7 recites the limitation "the lateral edge" in line 3. There is insufficient antecedent basis for this limitation in the claim because it can't be determined which of the lateral edges is meant, the lateral edge associated with the first side panel or the lateral edge associated with the second side panel.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-3 and 28-33 are rejected under 35 U.S.C. 102(e) as being anticipated by Merey.

The latch is best shown in Fig. 6 and 7, Fig. 6 depicts an engaged position with a first side panel 16 and a second side panel 20, the first side panel including an outer face, a first lateral edge with a latch catch portion extending toward the second side panel having a base attached to the first lateral edge, a lever arm at its tip and a first intermediate portion between the base and lever arm having a first cam surface and a first shoulder, the second side panel including an inner face, a second lateral edge having a lateral edge flange extending inwardly from the lateral edge toward the first side panel and an inward projection extending inwardly

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from the lateral edge flange, the inward projection has a second cam surface and a second shoulder. Fig. 7 depicts the disengaged position. For claim 3, Merey discloses rib as shown in Fig. 6 and 7 inward of the latch on the first lateral edge which extends vertically and generally perpendicular to the pivot axis of the first side panel, the base portion of the latch member is integrally formed with the rib.

Claims 11-13, 20-23 and 27 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Smyers et al. (Smyers) and Foy ('079).

Claims 20-23 and 27 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Luburic.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merey in view of Foy ('079).

Merey discloses the invention except for the inside corner which receives a rib. Foy teaches a rib associated with a latch and first side panel 14 which is received in the inside corner of the second lateral edge of a second side panel 20, the rib extend both vertically and outwardly from the outer face of the first side panel generally perpendicular to the pivot axis of the first side panel. It would have been obvious to add the rib at a location such that the rib is received on the inside corner of an adjacent panel in order to provide a rib-corner structure which adds stability

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to prevent warping or buckling in the corner area and to increase the structural strength of the corner for stacking loads as well as side impact loads.

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Merey in view of EPO reference No. ('779) to Yamauchi.

Merey discloses the invention except for the locating projection and socket. Yamauchi teaches a first side panel 300 with at least one outwardly projecting locating member and a second side panel 200 with at least one socket receiving the locating member. It would have been obvious to add the locating projection and socket in order to promote proper alignment to ensure correct latching, structural integrity and reduced wear.

Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merey in view of Smyers.

Merey discloses the invention except for the basal edge and recessed shelf construction. Smyers teaches a basal edge and recessed shelf construction. It would have been obvious to add the basal edge and recessed shelf construction in order to ensure proper alignment, structural integrity and reduced wear.

over come by statement submitted 2/23/04

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smyers in view of Yamauchi.

Smyers discloses the invention except for the locating projection and socket. Yamauchi teaches a first side panel 300 with at least one outwardly projecting locating member and a second side panel 200 with at least one socket receiving the locating member. It would have been obvious to add the locating projection and socket in order to promote proper alignment to ensure correct latching, structural integrity and reduced wear.

over come by statement submitted 2/23/04

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Claims 15-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smyers in view of Yamauchi as applied to claim 14 above, and further in view of Merey.

The combination disclose the invention except for the latch configuration. Merey teaches the latch configuration. It would have been obvious to modify the latch to include the components of Merey in order to provide a positive latching so that side walls do not inadvertently open yet having a mechanism for easy and ready disengagement of the latch to open the side walls when such is needed. *overcome by statement submitted 2/23/04*

Claims 5 and 6 are allowed.

Claims 18 and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed September 26, 2003 have been fully considered but they are not persuasive.

Applicant discusses that Merey doesn't anticipate because the base portion is proximate the lateral edge of the side panel and the lever arm extends generally away from the lateral edge. The examiner has explained that the base is attached to the first lateral edge which is shown as the portion near the bottom of Fig. 6 close to reference sign 16 and the lever arm extends away from the lateral edge towards the second side panel to an outer end of the lever arm near reference sign 84. The examiner doesn't agree with applicant.

Applicant's remarks regarding Foy and Smyers are not well taken since recessed shelves located below a pivot axis of the wall are shown in both references.

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Applicant requests explanation of where the stop member is located. Luburic discloses the side panel as panel 54 and pivot pin 64, the basal edge is any edge close to pivot pin between members 56 and the pivot pin includes an inwardly-facing abutting surface, the bottom panel includes a stop member as that portion which engages the pivot pin between members 56 (see Fig. 12 for the engagement of the inwardly-facing abutting surface with the stop member). Regarding claim 21, the stop member is cantilevered in an upward direction.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 703-308-1035. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 703-308-2572. The fax phone numbers for the

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organization where this application or proceeding is assigned are 703-872-9302 for regular communications and 703-872-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc